

**UTAH AIR QUALITY BOARD MEETING**  
**January 5, 2005**  
**MINUTES**

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**I. Call to Order**

John Veranth called the meeting to order at 1:35 p.m.

Board members present:

Jerry Grover	Richard Olson	Marcelle Shoop
Jim Horrocks	Wayne Samuelson	John Veranth
Dianne Nielson	JoAnn Seghini	Ernest Wessman
Executive Secretary: Richard W. Sprott		

**II. Next Meetings.**

February 2, March 9, and April 6, 2005. Mr. Veranth announced that Dianne Nielson would remain as the Department Executive Director under the new governor, Jon M. Huntsman, Jr.

**III. Approval of the minutes of November 3, 2004, Board Meeting.**

- Richard Olson motioned for the minutes to be approved and Ernest Wessman seconded. The Board approved unanimously.

**IV. Final Adoption: R307-110-11 and SIP Section IX.B, SO<sub>2</sub> Maintenance Plan.**

Presented by Bill Reiss

Rick Sprott reported that he had received a request this morning from EPA asking that this item be pulled from the Board agenda. EPA expressed concerns over three issues. One was the modeling associated with refineries that EPA was still reviewing. The other two dealt with the Director's discretion and variance that EPA brought up as issues with the PM<sub>10</sub> maintenance plan. It was explained that most SIPs had not made it through the whole process without adjustments after submittal. Staff had spent about three years addressing EPA's previous concerns. Since the material showed that it had been decades since there had been an SO<sub>2</sub> exceedence, and with the significant amount of work that had gone into the plan, it was decided to go ahead and allow the Board to consider this action. Staff would continue to work with EPA and try to get a final maintenance plan.

Bill Reiss explained that staff had received comments from EPA as a result of the public comment period in October. Staff met with EPA, and the changes are reflected in the revised maintenance plan. Some of the changes that have been brought to the Board address the historical nature of the improvements that have been made at the Kennecott smelter. Staff asked that the Board give the approval so the plan could be submitted to EPA in the amended form.

Dianne Nielson asked Rick Sprott to clarify the following. In continuing discussions with EPA, could the Board expect amendments in the future? What would be EPA's

reaction if the Board proceeded today, and approved it? Did EPA give any alternatives in the letter and what were the Board options?

Rick Sprott replied that EPA's letter didn't propose any options other than for staff to continue to work through the Director's discretion and the various other issues that the Board is familiar with. Regarding the modeling, EPA hadn't had time to review the new material. During a previous discussion with Dick Long, EPA, it had been agreed that staff would go ahead and process the maintenance plan and submit it to the Board. Any changes would not have to go out for additional public comment, but staff would bring them before the Board. Response to questions from EPA were non substitutive and were for clarification only.

John Veranth asked Rick Sprott to summarize the normal process on how a SIP is handled and sent to EPA.

Rick explained that staff pulls together documentation and goes through the technical analysis that is needed to make changes to the rule. Staff will talk on the phone and/or meet face to face with EPA and try to get it all settled beforehand. This was the process with this plan almost three years ago and the Board put it out for comment. Because of EPA concerns, it was pulled and further work on the modeling was done. The results were sent to EPA with some minor adjustments. When it is submitted, it narrows the scope of the comment and actions to those particular concerns. Staff proposes to work through any issues that EPA has and negotiate to win a partial or complete approval. EPA can approve or disapprove in part.

- JoAnn Seghini moved to make a motion that the Board approve the submission of the Final Adoption of R307-110-11 and SIP Section IX.B, SO2 Maintenance Plan to go to EPA for their final review and approval.

Richard Olson seconded the motion.

Bill Reiss noted that there were additional changes on page 13, Table 4, Notes:, dates were incorrect and needed revision. On line 1, the original attainment SIP for SO2 was submitted in 1981, not 1989. On line 2, the second one of the inventories that was in the table is incorrectly labeled as 1988 and should be 1990. Staff requests that the motion include these changes. This all went out for public comment on October 1, 2004. As a result of the comments received, staff is proposing changes that appear as underlined or show a strikeout. The public has not had a chance to consider those changes because they are a non substantive and more of a clarification and does not change the meaning. So with those changes, staff asks for a motion to approve the plan with the changes and the two that do not appear that are not underlined or stricken out.

JoAnn Seghini said that the amendment would be included in the motion.

Ernest Wessman called the question.

John Veranth asked the Board if they were in favor and the Board approved unanimously.

**V. Proposal for Final Approval: Natural Events Action Plan (NEAP).** Presented by Dave Strohm

Dave Strohm reported that the Natural Events Action Plan (NEAP) had gone out for a 30-day public comment period after it was presented to the Board in October 2004. Comments were received from EPA and Kennecott Utah Copper and a summarized copy was attached to the packet. Mr. Strohm gave a quick review of the difference between the NEAP and the standard rule making process approved in the SIP provisions. EPA accepts and does not approve the NEAP. In order for the NEAP to be adopted, staff had to show that the best available control measures (BACM) were currently in place. EPA's acceptance of the NEAP allows staff to flag data that is attributed to natural event occurrences that will keep Utah in attainment. EPA also has the requirement for a five-year review on all NEAP's. If there are sufficient events in the future that are flagged as natural events, then that information is resubmitted as an amendment to the NEAP to show that the event is being dealt with.

In answer to John Veranth's question of a significant event, Dave Strohm replied that a significant event would produce an exceedence of the National Ambient Air Quality Standard (NAAQS). Then staff submits a packet for that event showing that it was attributed to a natural event. It will also show if the current NEAP is dealing with that type of natural event or whether there needs to be a change to the NEAP. It won't go through the entire process again, but staff will make any needed modifications.

Rick Sprott reported that the Clean Air Act specifically addresses natural events for PM10. It does not for PM2.5. EPA has yet to come out with their implementation guidance for PM2.5.

Jerry Grover asked about a monitor in Logan.

Dave Strohm replied that there was a monitor in Logan and the general form of the NEAP still applied. The NEAP identifies specific monitors that have experienced problems. Staff does the analysis that shows which sources are impacting a particular monitor and that would change geographically. The monitors that the NEAP is based on run along the Wasatch Front. It starts south at Lindon and ends south of Ogden to the north. If there was an exceedence for PM10 in Logan, then those sources that were impacting the monitor in the meteorological analysis would need to be added and that would be an amendment to that NEAP. If a monitor were moved, EPA would want an analysis of the sources around that monitor in the new location. Staff still has to submit an analysis of the event with meteorological and air quality data that give EPA a reasonable understanding that it is a natural event. A new NEAP does not have to be redeveloped.

Staff answered questions concerning gravel pit dust plumes and wild fires. Neither had impacted the NEAP that was to be submitted. All of the events were shown in the appendices.

John Veranth mentioned that the NEAP really has two parts. One, to identify the event that is being flagged that would cause an exceedence, and the other is to notify the public.

- Marcelle Shoop made the motion that the Board approve the final Natural Events action plan with the following modifications. The typographical error identified on page 11, “listserv” should be “list serve”. On page 28: Table 4, note that it is a summary; line 16, change “weather” to “whether”; Table 4, column one, second row, “Brigham” should be “Bingham”.

Ernest Wessman seconded the motion. The Board approved unanimously.

**VI. Propose for Public Comment R307-210-1. Incorporation by Reference, 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS).** Presented by Rusty Ruby

The Division had previously incorporated the New Source Performance Standard (NSPS) by reference into the Utah Administrative Code R307-210. Staff needed to update the rule to the current version of the New Source Performance Standards. Staff is proposing that the Board submit for public comment the modification to R307-210-1 to update the incorporation of reference to include the current NSPS up to July 8, 2004.

- Jerry Grover motioned that the Board approve the proposal to go to public comment on R307-210-1. It was seconded by Wayne Samuleson. The Board approved unanimously.

**VII. Appeal Of Sevier Power Company Permit And Appeal Of IPP Unit 3 Permit. Notification Of Further Proceedings.** Presented by Fred Nelson

Ernest Wessman reclused himself from the discussion because of the interest PacifiCorp has in the matter.

John Veranth stated that early this year, environmental groups asked him to be reclused from any of the discussions. Since that meeting, there has been no contact with either of these projects.

Fred Nelson stated that in October, the Executive Secretary issued two approval order permits. One to the Sevier Power Company to construct a coal powered plant in Sevier County Utah. The second was issued to the Intermountain Power Service Corporation to construct Unit 3 at their Millard power plant.

Those Approval Orders have been appealed to this Board. The Board is subject to the Administrative Procedures Act of the State and that Act provides that if someone challenges or wants to challenge permits or decisions or approval orders issued by the Executive Secretary, it is submitted to this Board for a request for agency action.

The Board has received, with respect to the Sevier Power Company permit, three requests for agency action. Those petitioning to intervene are: Sierra Club and Grand Canyon Trust, Sevier County Citizens for Clean Air and Water, and PacifiCorp.

For Unit 3 of the Intermountain Power Plant, a request for agency action challenging provisions of the permit were submitted by the Sierra Club and Grand Canyon Trust, Millard County Commission and PacifiCorp.

In addition, the Intermountain Power Service Corporation has a request for agency action with respect to some particular provisions of the permit that was issued to them. Under the Administrative Procedures Act, if a proceeding is initiated, the Executive Secretary and the company or individuals receiving the permit are automatically parties to the proceeding. So with respect to the Sevier Power Company appeal, the Executive Secretary and the Sevier Power Company by rule and statute are parties to the proceeding. For the Intermountain Power Group appeal, similarly the Executive Secretary and Company is party to the proceeding.

Other persons that are interested in the process and would like to participate must file a petition to intervene. To petition to intervene under the statute, parties must demonstrate that they have a legal right or interest in participating in the process. So in any of these kinds of proceedings, the Board will have to make an initial determination whether or not to allow the parties to intervene in the proceedings.

Under the act, the Board is required to set this matter as a process for a formal hearing and the Board becomes the judge, the impartial adjudicative body that will hear those matters. As a result, members of the Board are not to speak about the issues with the parties or individuals. The Board is to hear the evidence as a new process. The Board becomes a secluded group in respect to these issues, so every petitioner has a fair opportunity to the information. The issues and all those present will hear the same information and the Board can then make an impartial decision.

The Board needs to decide initially who can participate in the proceedings and determine whether or not the parties petitioning to intervene have met the requirements of the statute. The March Board meeting would hear the question of whether or not the individuals and organizations can participate.

Mr. Nelson continued to say that he was representing the Air Quality Board as legal counsel. Rick Rathbun and Chris Stephens would represent the Executive Secretary, Rick Sprott.

Rick Rathbun noted that there were other parties present that were represented by counsel or may be represented by individuals and not attorneys. The following were introduced: Shawn Phelan and Toro Walker from the Sierra Club and Grand Canyon Trust; James Kennon, President of the Sevier County Citizens for Clean Air and Water; George Haley and Blaine Rawson representing Intermountain Power; Fred Finlinson for the Sevier Power Project; Martin Banks from Stoel Rives representing PacifiCorp in IPP and Sevier Power.

Mr. Nelson went on to say that there were a couple of things the Board needed to do with the Notice of Further Proceedings. The Board needed to decide the dates to hear the intervention requests and the appointment of a presiding officer. The presiding officer would decide on procedural issues that would come up between Board meetings. The Board could decide later to appoint a hearing officer to hear the matter and then bring a recommendation to the Board, or the Board can hear the entire matter. The Board would still need to read the transcripts and make the decision.

Mr. Nelson said that in the draft, he hadn't requested that the parties meet together and propose a schedule to the Board on how much time they believe it would take to hear this matter.

John Veranth said he would be willing to volunteer his services to be the presiding officer, but did it with some hesitation because it would be time consuming.

January 28 was set to file any responses to the intervention request. February 18 is marked for any replies. All parties are to submit enough copies for all Board members and each of the entities.

Fred Nelson recommended that the Board adopt the Notification of Further Proceedings with a modification that instead of February 11 it would now read Feb 18 for replies to be submitted on the petitions to intervene.

There was a lengthy discussion on rights of intervention.

Fred Nelson listed those petitioning to intervene were PacifiCorp, Millard County Commission, Sierra Club and Grand Canyon Trust. It also gives the Sierra Club and Grand Canyon Trust the opportunity to file something with respect to the PacifiCorp and the Millard County Commission requests.

Fred Nelson replied yes when John Veranth asked if the Board was letting all parties and petitioners submit information to be considered by the Board at the March meeting. At that time, the Board would take each party's request for standing and act on it.

- Dianne Nielson said she would make two separate motions.

I would move that the Board accept the form that is before the Board today for the Notification of Further Proceeding in the matter of the Sevier Power Company Power Plant, Sevier County, Utah, DAQE-AN2529001-04, with the following addition in the first full paragraph on page two, the sentence in the middle of that paragraph beginning with "Any response". The sentence would now read, "Any response", and insert the phrase, "by parties or petitioners as referenced in paragraphs one, two and three of this document", the sentence would proceed to "any intervention request". The next sentence beginning, "any reply would be submitted", the date would be changed from "February 11" to "February 18". On the third page, under the "Presiding Officer", "The Board hereby appoints the Chairman of the Board, John Veranth, to act as the Presiding Officer in the matter of Notification of Further Proceedings".

JoAnn Seghini seconded. The Board approved unanimously.

There was a request to speak from the audience.

James Kennon from the Sevier County Citizens for Clean Air and Water expressed his concerns. One of the requests was on notification and communication. He would like the agenda posted on the web site. Also, he asked that enough time be given to make any responses to the Board.

- Dianne Nielson moved that the Board adopt the form of Notification to Further Proceedings in the matter of Unit 3 of the Intermountain Power Services Corporation, Millard County, Utah, DAQE-AN0327010-04 with the following changes: In the second full paragraph on page two in the sentence beginning with "Any responses", insert the phrase, "by parties or petitioners as referenced in paragraphs one, two, three and four of

this document”, the sentence would proceed. Next, the third sentence would read, “Any reply would be submitted by “February 18” rather than “February 11”. On page three under the heading, “Presiding Officer”, “The Board hereby appoints Chair, John Veranth as the Presiding Officer for the purpose of issues in the Notification of Further Proceedings”.

Richard Olson seconded and the Board approved unanimously.

## **VIII. Informational Items**

- A. PM10 Maintenance Plan Update:** Presented by Bill Reiss and Colleen Delaney. Bill Reiss introduced Colleen Delaney who would review the Rule Revisions.

Bill Reiss informed the Board that this would be a review of the PM10 Maintenance Plan.

Presently there are two distinct nonattainment areas with approved PM10 SIPs, Utah County and Salt Lake County. They were approved in 1991 and have demonstrated attainment from 1993 to 2003. This new plan would pick up where the old one left off. It would demonstrate another 10 years of compliance with the PM10 SIP standards.

Much of the PM10 problem is associated with secondary aerosol formation. The comprehensive plan would include Utah County and Salt Lake County and Ogden City as well.

The process began with a selection of two episodes where staff measured high concentrations of PM10 with strong temperature inversions. The modeling protocol documented concentration of air emissions during the episode. That includes PM10, SO<sub>2</sub>, NO<sub>x</sub>, and also covers point sources, area sources and mobile sources. EPA has reviewed and accepted it. This became a template of how staff compiled the remaining inventories. A model was successfully run which completed the validation. Staff can then develop projection year inventories that represent 10 years out.

The PM10 standard has two parts. It has an annual component as well as a 24-hour standard. Since staff has had difficulty showing compliance with the 24-hour standard, the focus would be on that analysis. Staff has now been successful in the process and has some draft model results. Based on those results, staff is optimistic that attainment can be shown for another 10 years. This forms the foundation of any SIP revisions, either a maintenance plan or an attainment SIP. For the legal aspect, staff needs to show that the model analysis will follow the rules and regulations, guarantee air quality for the next ten years, and that the plan could be made enforceable.

The SIPs that are in place right now contain emission limits. The ones now are a very detailed compilation of emissions limits and operating restrictions for a very large number of sources. It is much more difficult to modify a SIP condition than a permit condition. Typically, some sources need to come in from time to time and modify the permit that they have on file; and then staff will reflect minor

modifications to the operation. Over the past 10 years this has led to some apparent inconsistencies between the SIP regulations and the various approval orders. In some cases it has even prevented staff from issuing Title V permits.

With this new plan, staff will develop SIP conditions for significant emissions limits and operating parameters as necessary to ensure attainment of the standards and protection of public health. At the same time, it will allow some flexibility when the sources come in and do request permit changes.

A stakeholder SIP meeting was held in November and constructive comments were received. The next step will be to take the finalization of those SIP conditions and run them to the extent that they agree with the emissions inventories that were projected in the model. At that point, staff will do the modeling analyses, projection year inventories, and do a proposed draft and make it available to EPA.

John Veranth mentioned that the letter contained items that had been committed to EPA to address various issues; one was the Director's discretion. There had been issues over that terminology. The Board needs to be more consistent with EPA's national thinking, and address each of those issues where EPA has objected.

Bill Reiss stated that for the Director's discretion, staff had language that was going to be proposed as Part H into the SIP conditions portion of the plan. It is a paragraph that draws on some existing federal regulations. Staff is hoping that will go a long way to addressing EPA's concern. As far as the variance provisions, the present language basically allows the discretionary use of the Board's good judgment, as long as it is not contrary to the Clean Air Act. Currently there is reform at the Federal NSR on emission banking and interpollutant trading. Also, if staff is successful on redesignating the area, then the terms of the nonattainment NSR program will change to PSD permitting programming. Within that context, the emissions banking will be less significant than it had been. Staff is still working on the emissions rule. Back half emissions would be addressed when the EPA PM2.5 implementation guidance is developed. In order to get credit for the wood-burning program, staff would need to show that it is better than what EPA says it is.

Colleen Delaney talked about rules and changes that needed to be considered with the maintenance plan. The two groups are backsliding and the permitting program.

**Back Sliding:** There have been a number of control strategies that have been applied and worked in the PM10 nonattainment areas. These would be things like the wood burning control program, fugitive dust requirements, opacity limits, and road salting and sanding that have helped the area stay in attainment. There are 11 recommended changes that are being proposed that will need to continue in the new maintenance areas.

**Permitting Program:** Upon the Board's request with the 5-year rule review, staff has looked at the rules and recommends a number of changes that will update and clarify them. They have been placed into a series of rules. The 200 series would be a requirement that applies statewide. This group of rules applies to rural areas that have always been in attainment. This group would be removed from the SIP and would not be part of the federally approved state implementation plan, but would fall under state rules only.



Another 200 series group would apply to new attainment areas. As these areas are redesignated, staff wants to make sure the program continues. One concern is the wintertime temperature inversion that forms particulate matter from secondary sulfates and nitrates. Under the PSD permitting program, the air quality models do not have the capability at this time to quantify the impacts of secondary pollutants in the PM10 model. Staff suggests retaining the offset provisions currently in place in the nonattainment areas for SO2 and NOx as a backup mechanism to complement the modeling that is done under the PSD program. This was the approach that was used in the ozone nonattainment areas. Staff kept in place a state only rule for offset requirements for NOx and VOC's. Currently there are no permitting models that could be used in order to make the day-to-day permitting decisions. Once an area is redesignated attainment, it will take some time for the Board to approve the SIP. Also, the PSD permitting program will become effective for PM10 and SO2 when that maintenance plan is approved. There will be a stakeholders meeting February 1 to discuss this with affected parties.

Ms. Delaney continued by saying the 300 series applies specifically to nonattainment areas for particular pollutants.

Finally, there is the question on how can staff use the permitting process, perhaps using the Title V process, to make sure there are certain kinds of changes made to some of the SIP conditions dealing with the Director's discretion issue.

Jerry Grover asked about the diesel program and credits.

Bill Reiss explained that the diesel program had been built and calculated into the model. After a discussion with EPA, it was on the table for the moment.

Rick Sprott stated that Utah was getting some credit and credit was needed to demonstrate attainment.

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The Board meeting was adjourned at 3:50 pm.